THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.13743 of 2005

Date : 23-11-2007

Between :

Talari Hussainaiah
..Petitioner

And

The District Collector,
Kurnool and three others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.13743 of 2005

ORDER:

1. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in proposing to excavate a channel across the petitioner's land of an extent of Acs.1-66 cents in Sy.No.588/B of Gopavaram village, Mahanandi Mandal, Kurnool District without initiating the proceedings under the Land Acquisition Act as illegal, unjust, contrary to Law and offends Articles 14, 21 and 300-A of the Constitution of India and consequently to direct the respondents not to dig the channel through the petitioner's land and to pass such other suitable orders.

2. It is stated that the petitioner is a small farmer eking out his livelihood by cultivating a small extent of land of Acs.1-66 cents in Sy.No.588/B of Gopavaram village, Mahanandi Mandal, Kurnool District. The said land is the

ancestral property the petitioner which was acquired by his ancestors by way of a registered sale deed dated 27-4-1931. It is a wet land having the source of irrigation under Byruvani Cheruvu Tank and he had been cultivating the said land and eking out his livelihood by raising paddy crop. It is also further stated that the family of the petitioner is a big one with five daughters and one son and this land is the only source of income to support the family members. It is further stated that the petitioner came to know that the Telugu Ganga authorities had proposed to dig a field channel in 13th Block in the village and that the work of digging the field channel was entrusted to the 4th respondent. The petitioner came to know about the said works when some of the officers visited the area and that the 4th respondent is digging the channel in deviation of the original plans furnished to him by the Irrigation Department and that the respondents are planning to dig the channel across the petitioner's land diagonally bifurcating the same into two small triangular bits making it unfit for cultivation as more than 50% of the petitioner's land will be utilized for such excavation. Further it is stated that on coming to know about the illegal and high handed action of the respondents, the petitioner made a representation dated 31-5-2005 to the 1st

respondent i.e., District Collector, Kurnool ventilating his grievances. The petitioner's representation had been forwarded to the Mandal Revenue Officer, Mahanandi Mandal to take necessary action. The Mandal Revenue Officer, Mahanandi Mandal in turn forwarded the same to the 3rd respondent for taking necessary action. When there was no positive response from the respondents, the petitioner got issued a legal notice dated 6-6-2005 not to dig a channel across the petitioner's land as it will amount to interference with his peaceful possession and enjoyment of the land and the land will become unfit for cultivation. Despite the same, the respondents are bent upon to excavate the field channel across the petitioner's small extent of land without any lawful manner and under the aforementioned facts and circumstances, the petitioner had been advised to approach this Court. It is further stated that the action of the respondents in highhandedly proceeding to excavate the channel in the petitioner's land is unjust, contrary to law and violative of Articles 14, 21 and 300-A of the Constitution of India. It is further stated that the action of the re in proposing to excavate a field channel in the said land without initiating any proceedings under the Land Acquisition Act and without acquiring the same and without paying the

compensation is unjust and offends his right to livelihood and to the knowledge of the petitioner, no acquisition proceedings had been initiated so far. The respondents without following the due process of law and without initiating the proceedings under the Land Acquisition Act made all arrangements for excavating the channel across the land of the petitioner. In any case, if the respondents want to excavate the field channel across the petitioner's land, firstly the respondents have to initiate proceedings under the Land Acquisition Act by issuing a draft notification under Section 4(1) of the said Act and thereafter if they want to take advance possession they may do so after paying 80% of the compensation in compliance with the mandatory requirements under the Land Acquisition Act in the absence of which the respondents cannot enter into the petitioner's land and hence the action of the respondents is unsustainable. It is further stated that the proposed channel, if it is excavated, it will take away a major portion of the petitioner's land and the remaining land will be bifurcated into two small triangular bits which will be unfit for cultivation and the petitioner will be totally deprived of his property and hence the impugned action offends the petitioner's rights guaranteed under the Constitution of India. Further, the

action of the 4th respondent in deviating the original plans while excavating the channel is mala fide and highhanded. The 4th respondent cannot be allowed to deviate from the original plan and the respondents 2 and 3 cannot permit the same. It is further stated that though the notices issued on behalf of the petitioner were served on the respondents as early as on 8-6-2005, the very fact that there is no reply or response from them itself supports the highhanded and mala fide attitude of the respondents in trying to deprive the petitioner of his valuable property. In such circumstances, the petitioner approached this Court under Article 226 of the Constitution of India.

3. This Court issued *rule nisi* on 27-6-2005 and in W.P.M.P.No.17251/2005, interim stay was granted for a limited period and subsequent thereto on 20-7-2005, the interim stay was extended until further orders. It is brought to the notice of this Court that the notification under Section 4(1) of the Land Acquisition Act had been issued. It is needless to say that the official respondents are bound to follow the procedure before further proceeding with the action in question. Inasmuch as it is stated that land acquisition proceedings already had been initiated, let the official respondents further proceed with the action in question in accordance with Law.

4. With the above observations, the Writ Petition is disposed of. No order as to costs.

_____

Justice P.S.Narayana

Date : 23-11-2007

AM